

REMARKS

This amendment is filed in response to the restriction and election requirements of the May 15, 2006 official action.

The official action identifies four inventions: claims 1-18 drawn to a low-profile package for housing an optoelectronic device; claims 19-24 drawn to a method for hermetically sealing a substantially flat metal cover to an insulating base; claims 25-26 drawn to an automated process for manufacturing a package, wherein the package is adapted to house an opto-electronic assembly; and claims 27-30 drawn to a packaged optical module.

There are two requirements for sustaining a restriction requirement: 1) the claims must contain independent or distinct inventions; and 2) there must be a serious burden on the examiner if restriction is not required. The examiner must show his/her reasoning for both to sustain a restriction requirement. MPEP §808.

Although the Examiner has set forth a showing regarding the first requirement, Applicant respectfully traverses the restriction requirement for lack of a showing of the second – a “serious burden on the examiner” to review all sets of pending claims.

The MPEP §803 requires a *prima facie* showing of substantial burden “on the examiner if restriction is not required.” In the restriction requirement, the Examiner merely says that the inventions would require a different field of search, without identifying the different fields of search or any different classifications for the various claims. Indeed, the Examiner nowhere identifies why it is believed that “it is necessary to search for one of the inventions in a manner that is not likely to result in finding art pertinent to the other inventions,” as required in MPEP §808(c).

The absence of any showing of a serious burden is magnified in the instant case by virtue of the Examiner having already examined all of the claims, in his November 30, 2005 official action. In that official action, the Examiner considered all of the pending claims, apparently without any serious burden. In fact, in that official action, Examiner Ullah rejected each of the pending claims under a non-statutory obviousness type double patenting rejection based on U.S. Patent No. 6,860,652, suggesting that each claim in the present application was patentably indistinct (in some cases “the same”) from a corresponding claim

Application No.: 10/706,209
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in the '652 patent. When Examiner Ullah served as the primary examiner for the application that led to the '652 patent, the Examiner examined each of the claims without restriction, and presumably without "serious burden."

The Examiner has already examined all 30 claims in this case without the "serious burden" required by the MPEP. The Examiner examined similar claims in the parent case, again without "serious burden." There is no basis for now requiring restriction. Applicant respectfully traverses and requests reconsideration.

To comply with the requirements for responding to a request for restriction, and while awaiting removal of the restriction as requested above, Applicant elects claims 1-18.

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Respectfully submitted,

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